

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIAM D. BURKETT,

Petitioner,

v.

MAGGIE MILLER-STOUT,

Respondent.

Case No. C05-5612FDB

ORDER REFUSING TO SERVE  
PETITION AND DIRECTING  
PETITIONER TO SHOW CAUSE

The Court, having reviewed the record, does hereby find and ORDER:

(1) The matter before the court is construed as a motion for collateral relief from a state conviction. Accordingly, the court treats this matter as a § 2254 petition for writ of habeas corpus.

The Court will not order a response to the petition because the petition does not indicate that petitioner's grounds for federal relief have been properly exhausted in state court. Specifically, the petition does not show that his claims for federal relief have been presented to the Washington State Supreme Court.

The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). If exhaustion is to be waived, it must be waived explicitly by respondent. 28 U.S.C. § 2254(b)(3). A waiver of exhaustion, thus, may not be implied or inferred. A petition can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir.), *cert. denied*, 478 U.S. 1021 (1986).

1 Full and fair presentation of claims to the state court requires “full factual development” of the claims in  
2 that forum. Kenney v. Tamayo-Reyes, 504 U.S. 1, 8 (1992).

3 (2) Petitioner is directed to file his petition on the appropriate court form used for § 2254  
4 petitions and should show cause by **October 26, 2005**, why the petition should not be dismissed for lack of  
5 exhaustion.

6 (3) The Clerk is directed to send a blank copy of a § 2254 petition for Mr. Burkett to review  
7 and submit to the court, along with copies of this Order and the General Order to petitioner.

8 DATED this 28th day of September, 2005.

9  
10 /s/ J. Kelley Arnold  
11 J. Kelley Arnold  
12 United States Magistrate  
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